

**Applicant:** Elizabeth R. Ramirez

**Agent:** Garcia/Kraemer & Assoc.

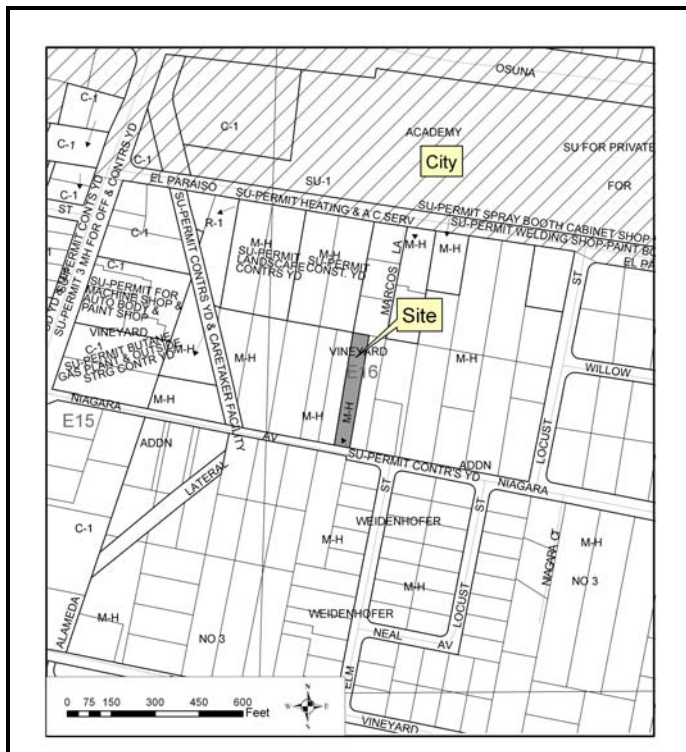
**Location:** 519 Niagara Ave. NE

**Property Size:** .5 acres (approximately)

**Existing Zone:** M-H

**Proposed Zoning/SUP** Special Use Permit for a Contractor's Yard and a Single Family Dwelling

**Recommendation:** Approval



**Summary:** This request is for a Special Use Permit for a Contractor's Yard and a Single Family Dwelling on a .5 acre tract of land located on the north side of Niagara Ave. about 1000 feet east of Edith Blvd. The property has M-H zoning, but had a Special Use Permit for a Contractor's Yard, which expired in 2003 (CZ-93-9). The applicant is seeking permission to keep a contractor's yard on the property.

This request was continued at the December 5, 2007 hearing to allow the applicant to address staff's comments. The applicant has submitted a revised site plan.

**Staff Planner:** Catherine VerEecke, Program Planner

- Attachments:**
1. Application
  2. Area and Land Use Maps
  3. Special Use Permit Notice of Decision.
  4. Notice of Violation
  5. Letters from neighbors
  6. Notice of Decision
  7. Re-submittal letter
  8. Revised Site Plan, dated 1/28/08 (Commissioners only)

Bernalillo County Departments and other agencies reviewed this application from 10-22-07 to 11-7-07 and from 1-29-08 to 2-11-08. Their comments were used in preparation of this report, and begin on Page 12.

**AGENDA ITEM NO.: 9**  
**County Planning Commission**  
**March 5, 2008**

CSU-70049      Garcia/Kraemer & Associates, agent for Elizabeth R. Ramirez, requests approval of a Special Use Permit for a Contractor's Yard and a Single Family Dwelling on the westerly ½ of Lot 32, Vineyard Addition #3, located at 519 Niagara Road NE, zoned M-H, and containing approximately .50 acres. (E-16) (CONTINUED FROM THE DECEMBER 5, 2007 HEARING)

**AREA CHARACTERISTICS AND ZONING HISTORY**  
**Surrounding Zoning & Land Uses**

<b>Site</b>	<b>Zoning</b>	<b>Land use</b>
	M-H	Contractor's yard Single Family Residential
<b>North</b>	M-H	Single family residential
<b>South</b>	M-H	Single family residential
<b>East</b>	M-H	Single Family Residential
<b>West</b>	M-H	Single family residential

## **BACKGROUND**

### **The Request**

The applicant is requesting a Special Use Permit for a Contractor's Yard and a Single Family Dwelling on a .5 acre tract of land located on the north side of Niagara Ave. about 1000 feet east of Edith Blvd. The property currently has M-H zoning and includes a residence, a large parking area, and a small structure that appears to be a garage. It is 58 feet wide and 383 feet long.

In January 1988, the Board of County Commissioners voted to recommend approval of a Special Use Permit for a Contractor's Yard on the subject property for a five year period (CSU-87-65). The Special Use Permit allowed for the storage of two dump trucks on the property within an existing garage. In March 1993, the Board of County Commissioners granted another Special Use Permit for a Contractor's Yard for the same use, again for a five year period. Conditions of approval included limiting the number of trucks stored on the site, no open storage of materials, a solid wall along the east and west property lines, and limited hours of operation (Attachment 3). This Special Use Permit expired in 1998. Recently, the applicant purchased the property and established a fence construction business without the proper zoning (Attachment 4--Notice of Violation).

The current site plan includes applicant's residence, an unidentified building, and a garage to be used for storage of the applicant's trucks.

Request justification. In the response to Resolution 116-86, the agent states that the proposed land use is consistent with the health, safety, and general welfare of the County by providing for a small-scale local owner occupied business. The agent states that the land use is not harmful to the area as the property is well kept, and fencing and landscaping screens the use.

### **Surrounding Land Uses and Zoning**

Although the property is located within an established residential subdivision (Vineyard Addition), the general vicinity of the site near Edith Blvd. has a mixture of uses. Properties to the immediate north, south, east and west of the site have M-H zoning with residential uses. In February 1988, the County Planning Commission recommended denial of the request for a Special Use Permit for a Contractor's Yard and Caretakers Facility on the property to the immediate west of the subject property (CSU-88-11). However, properties to the northeast and northwest of the site along El Paraiso Ave. have Special Use Permits for Contractor's Yards and similar uses. These have included a heating and cooling business (CSU 90-16), a landscape contractor's yard (CSU 71-102), a cabinet manufacturing business (CSU-85-37), and a contractor's yard (CZ 78-34).

About 1000 feet to the west of the subject site along Edith Blvd., properties have C-1 zoning. Some of these have commercial uses, such as tire shop and massage parlour. At the corner of Edith Blvd. and Niagara Ave., a 1.65 acre property has received Special Use Permits for a butane gas plant and later a contractor's yard with outside storage (CZ 70-36; CSU 81-28; CSU 85-47). It now stores propane gas and has an auto detail business on it. To the north of that business, a 1.7 property has had Special Use Permits for light industrial and heavy commercial uses on it since the 1960s (e.g., CZ 70-35, CZ-97-7). The most recent Special

Use Permit (CZ-20022) was issued in 2002 for a period of 10 years to allow a machine shop and an auto body repair shop. In 2004, a property with M-H zoning to the east of the machine shop and butane gas plant received a Special Use Permit for a Contractor's Yard (CSU-30016).

**APPLICABLE PLANS AND POLICIES:**

**Albuquerque/Bernalillo County Comprehensive Plan**

The site is located in the Semi-Urban Area as delineated in the Albuquerque/Bernalillo Comprehensive Plan. The principal goal for this area is to "maintain the character and identity of semi-urban areas which have environmental, social or cultural conditions limiting urban land uses."

**North Valley Area Plan**

This property is located within the Semi-Urban area of the North Valley Area Plan. The plan states that properties in this area may have special soil and water limitations or scenic, agricultural, or recreational assets, with the appropriate gross density at 1 to 3 dwelling units per acre.

Policy 2.3.c states that the City and County shall promote commercial development and redevelopment of existing commercially-zoned properties.

Policy 2d (Land Use) requires landscape buffering and other measures are necessary to limit potential impacts of non-residential uses on residential areas.

Policy 7.1 states the City and County shall stabilize land use to protect affordable housing and land presently zoned for housing.

- a. Maintain and expand areas zoned for residential uses including A-1, R-1, M-H
- b. Limit encroachment of non-residential uses into residential areas
- c. Encourage residential zoning of parcels with residential uses.

The property is also located in an area the Plan refers to as the Edith Blvd. corridor in a sub-area described as "rural-residential" between Osuna Rd. and Griegos Rd. However, the Plan does note that some locations within this area along Edith Blvd. have made a transition to manufacturing/heavy commercial uses. However, the Plan states that "Residential uses should predominate north of Montono Rd. and east of Edith Blvd." The Plan states that the "land use pattern should reflect the present zoning" (Appendix, p.4).

**Bernalillo County Zoning Ordinance**

Resolution 116-86 lists policies for evaluating a Zone Map changes and Special Use Permit applications.

- A. A proposed land use change must be found to be consistent with the health, safety, and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.

- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other Master Plans and amendments thereto including privately developed area plans which have been adopted by the County.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
  - 1. There was an error in the original zone map.
  - 2. Changed neighborhood or community conditions justify a change in land use or
  - 3. A different use category is more advantageous to the community as articulated in the Comprehensive Plan or other County Master Plan, even though (1) and (2) above do not apply.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. A proposed land use change which, to be utilized through land development, requires major and unprogrammed capital expenditures by the County may be:
  - 1. denied due to lack of capital funds; or
  - 2. granted with the implicit understanding that the County is not bound to provide the capital improvements on any special schedule.
- H. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- I. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:
  - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted land use plan; or
  - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- J. A zone change request which would give a zone different from the surrounding zoning to a strip of land along a street is generally called a "strip zoning." Such a change of zone may be approved only when:
  - 3. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the

uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone due to traffic or special adverse uses nearby.

## **ANALYSIS:**

### **Surrounding Land Use and Zoning**

The applicant is requesting a Special Use Permit for a Contractor's Yard on the .5 acre site. Some contractor's-type and light industrial uses exist in the general vicinity of the site with Special Use Permits for such uses, but they front on Edith Blvd. or on El Paraiso Rd., which are more oriented towards such uses. This particular property currently accesses off of Niagara Rd., which is in a residential neighborhood, and there are many residential properties nearby and adjacent to the site that could be adversely affected. However, this property has had small contractor's yards on it for nearly 20 years. In addition, in 2004, a property with M-H zoning about 700 feet to the west of the subject site received a Special Use Permit for a Contractor's Yard and Caretaker's Facility (CSU-30016).

### **Plans**

This property is located in the Semi-Urban Area. The Comprehensive Plan and the North Valley Area Plan suggest that this Area should retain its semi-rural, residential character and should not allow new permanent zone changes or special use permits for industrial or heavy commercial uses. In particular, the area to the east of Edith Blvd. is called out in the North Valley Area Plan as retaining residential uses. However, the North Valley Area Plan does state that existing commercially-zoned properties may be developed or redeveloped with commercial uses and recognizes that parts of Edith Blvd. and its vicinity have existing heavy commercial and light industrial uses.

### **Zoning Ordinance**

The request appears not to be consistent with Resolution 116-86 in that County land use plans and scenarios, particularly those of the North Valley Area Plan, that show the neighborhoods away from the commercial corridors as maintaining residential uses. However, the site and several parcels nearby it have had contractor's type uses on them, which could justify the continuation of a non-residential use on this property.

### **Agency Comments**

County staff and representatives from other agencies have provided comments on this case. A majority have no adverse comments on the case. The Zoning Administrator notes in his comments that the site plan does not comply with landscaping paving requirements of the County Zoning Ordinance. This includes the following: 1) a landscaping buffer along Niagara of 10-ft. in width; 2) six-foot wide buffers are required along the side and rear property lines; 3) all landscape buffers should incorporate trees (deciduous & coniferous), shrubs and ground cover, and more details are needed; and 4) paving (a portion of the site has a gravel and unpaved surface).

Planning staff noted during visits to the site that the site plan may not be accurate. Areas of open storage of materials and equipment were observed. Existing landscaping does not

match that shown on the site plan. In addition, the site plan is missing necessary information, including adjacent land uses, the use of an 'existing' building in the center of the site (no use indicated), and the dimensions of the existing dwelling unit. The site plan should also clearly indicate the number and location of vehicles to be parked on the property.

County Environmental Health comments state that the property has an account for Albuquerque/Bernalillo County water service. However, it does not appear to be connected to sewer service. Evidence of connection must be provided.

### Analysis Summary

<b>Zoning</b>	
Resolution 116-86	Changed neighborhood conditions appear to exist for the site. The site has had contractor's yards since the 1980s.
Requirements	Comply with code requirements for landscaping, fencing, surfacing.
<b>Plans</b>	
Comprehensive Plan	Use is not inconsistent with Semi-Urban Area designation.
Area Plan	Use is inconsistent with plan to retain residential uses away from Edith Blvd. Use is not inconsistent with North Valley Area Plan policies regarding re-development of commercial properties
<b>Other Requirements</b>	
Environmental Health	Has water account; must connect to sewer service.
Public Works	No comments.

### Conclusion

In conclusion, it appears that a Special Use Permit for a Contractor's Yard could be appropriate in this instance. The use as it currently exists on the site and is proposed in the request appear to have had limited impact on the area over the years. However, a number of issues with the site plan must be addressed for this request before staff can make a final recommendation.

### ADDITIONAL STAFF COMMENTS, MARCH 5, 2008

This request was continued at the December 5, 2007 CPC hearing to allow the applicant to address the comments noted by staff regarding the site plan and the connection to Albuquerque/Bernalillo County sewer service. Neighbors had expressed concerns with

potential noise and open storage associated with the use (Attachment 5).

The applicant has submitted a revised site plan and a cover letter to address staffs' concerns (Attachments 7 and 8). The site plan now includes the requested information for uses, dimensions of the structures on the site, and adjacent land uses. It also indicates the intent to comply with Bernalillo County requirements regarding landscaping and fencing, and to provide additional gravel surfacing where needed in the rear of the site. The agent states that the property is connected to Albuquerque/Bernalillo County sewer service as shown in a smoke test on the property.

Staff from County departments reviewed this re-submittal. Most have no additional comments. However, Environmental Health staff comments indicate that the applicant still has not provided evidence of connection to Albuquerque/Bernalillo County sewer service.

It also appears that the landscaping and fencing shown on the site plan still does not match what is currently on the site and does not fully meet County standards. If this request is approved, additional landscaping must be provided and the applicant must ensure that there is no open storage on the site and no fabrication associated with the use.



## **RECOMMENDATION**

Approval of CSU-70049 based on the following Findings and Conditions.

Catherine VerEecke  
Program Planner

## **FINDINGS:**

1. This request is for approval of a Special Use Permit for a Contractor's Yard and a Single Family Dwelling on the westerly ½ of Lot 32, Vineyard Addition #3, located at 519 Niagara Road NE, zoned M-H, containing approximately .50 acres.
2. This property previously had Special Use Permits which expired (CZ-93-9; CSU-87-65). This Special Use Permit supersedes the previous Special Use Permits.
3. The property is located in the Semi-Urban Area of the Albuquerque/ Bernalillo County Comprehensive Plan and the North Valley Area Plan.
4. This request is not in significant conflict with the North Valley Area Plan land use and housing policies that call for limiting the encroachment of non-residential uses in residential areas in that the property has retained its residential use.
5. This request is consistent with Resolution 116-86 in that changed neighborhood conditions in the vicinity of the site, including the development of several heavy commercial and light industrial businesses, justify this land use change.
6. This request is consistent with the health, safety, and general welfare of the residents of the County.

**CONDITIONS OF APPROVAL:**

1. The applicant shall provide to the Bernalillo County Office of Environmental Health proof of legal connection to Albuquerque/Bernalillo County sewer service prior to the approval of the final site plan.
2. The applicant shall schedule a field status inspection through the Building Official to verify life safety conditions on the contractor yard structures prior to the approval of the final site plan.
3. No fabrication or manufacturing will be allowed on the site.
4. A maximum of three vehicles associated with the business may be parked on the site within the existing truck garage.
5. The applicant shall comply with Bernalillo County Zoning Ordinance requirements for paving (for parking areas).
6. The applicant shall submit for review and approval to the Bernalillo County Public Works Division a summary of vehicular usage of the property that lists the types of vehicles, anticipated trips per day and general time of business operation, prior to final site plan approval. A copy of the approval shall be submitted to the Zoning, Building, Planning, and Environmental Health Department.
7. Lighting shall be site specific. Shielded or cutoff features shall be provided so that no fugitive light crosses into adjacent lots. On-site lighting shall be shown on the revised site plan.
8. No parking will be allowed along Niagara Rd.
9. There shall be no open storage of materials associated with the contractor's yard on the site.
10. Hours of operation shall be Monday to Friday, 7 a.m. to 6 p.m., and Saturday 8 a.m. to noon.
11. There shall be a six-foot high solid fence along the north and west property line and a 6 foot high solid wall along the east property line, which shall be constructed within six months of the final Board of County Commissioners' approval.
12. There shall be a 10 foot wide landscaped front yard along the front property line and a six foot landscape buffer along the three sides of the property that abut residential uses. Landscaping shall be installed within six months of the final Board of County Commissioners' approval and shall be in compliance with the landscaping requirements in the County Zoning Ordinance.
13. The applicant shall comply with all applicable Bernalillo County ordinances and regulations.

14. The Special Use Permit shall be issued for five (5) years.
15. A revised site development plan consistent with the Conditions of Approval shall be submitted for review and approval to the Zoning Administrator within two months after the final approval of the Board of County Commissioners.
16. The foregoing conditions shall become effective and shall be strictly complied with immediately upon execution or utilization of any portion of the rights and privileges authorized by this Special Use Permit.

## **BERNALILLO COUNTY DEPARTMENT COMMENTS**

### **Building Department:**

Corrections listed below must be corrected for approval:

The owner will be required to schedule a field status inspection through the Building Official to verify life safety conditions on the contractor yard structures as a condition of approval.

### **Environmental Health:**

1. Water acct. 23010465
2. Property must connect to sewer. No approved sewer or wastewater system meeting Bernalillo County Ordinances is known for this property.
3. The property is .49 acre in size and is approx. .25 acre smaller than allowed for conventional septic systems. This property must connect to sewer.

#### For 3/5/08

1. Water acct. 23010465
2. Property must connect to sewer. No approved sewer or wastewater system meeting Bernalillo County Ordinances is known for this property.
3. The property is .49 acre in size and is approx. .25 acre smaller than allowed for conventional septic systems. This property must connect to sewer.
4. An Environmental Health Flag has been placed on the property by an EH Scientist [Rita Armijo] for failure to provide proof of connection to sewer.
5. NOTE: Letter from William Kraemer, dated on Jan. 28, 2008 and revised site plan describes a sewer dye and smoke test to verify connection to sewer. This letter and revised site plan notes are inferences only and is not supported by a report from the ABCWUA.

The applicant shall provide a copy of the sewer bill from the ABCWUA to the Office of EH.

### **Zoning Enforcement Manager:**

Must comply with all Bernalillo County Code regulations for this project.  
Zoning violation is for expired special use permit only.

#### For 3/5/08

Must comply with all Bernalillo County Code regulations for this project.  
Zoning violation is for expired CSU permit only.  
No other adverse comments.

Zoning Administrator

Proposed SUP for a Contractor's Yard

Additional details are needed for the site plan:

- the overall size of the property necessitates a landscaping buffer along Niagara of 10-ft. in width
- six-foot wide buffers are required along the side and rear property lines
- all landscape buffers should incorporate trees (deciduous & coniferous), shrubs and ground cover; details needed
- alternate landscaping plan can be considered, but must incorporate an equal amount of landscaping on the subject site
- commission may consider gravel surfacing as appropriate cover for rear of property, but this allowance should be specifically referenced within the Conditions of Approval and should incorporate language regarding gravel size and depth (i.e., "A layer at least two inches thick of gravel sized from 3/8 minimum to one inch maximum diameter, at least ? inch of which shall be maintained on the surface.")

For 3/5/08

No comments received.

Fire:

NO ADVERSE COMMENTS AT THIS TIME.

Public Works:

DRAN:

A grading and drainage plan is not required at this time for approval of the Special Use Permit Request, because this request appears to be consistent with the current use of the property and no significant changes to the current development or terrain are implied. A formal grading and drainage plan with full report and analysis meeting the requirements of Bernalillo County Code Chapter 38, Floods, and Flood Damage Prevention, prepared by an engineer licensed in the state of New Mexico and approved by Bernalillo County Public Works, may be required prior to any additional development, re-grading or re-surfacing.

DRE:

1. The applicant shall submit to BCPWD as summary of vehicular usage of the property that lists the types of vehicles, anticipated trips per day and general time of business operation prior to site plan approval. The use proposed does not appear to warrant additional traffic studies.

Parks & Recreation:

REVIEWED, NO ADVERSE COMMENT.

Sheriff's:

No comment received

**COMMENTS FROM OTHER AGENCIES**

**MRGCOG:**

MPO staff have no comment on this particular project.

**AMAFCA:**

No comment.

**City Planning Department:**

No comments received.

**City Public Works:**

Transportation Planning: No comments received.

Transportation Development: No comments received.

**Water Utility Authority:**

No comments received.

**City Transit:**

No comments received.

**City Open Space:**

City Open Space has no adverse comments

**APS**

Vineyard Addition No. 3, Lot 32, is located on 519 Niagra Av NE between Edith Blvd NE and El Paraiso Rd NE. The owner of the above property requests a special use permit for a contractor's yard that will serve as a base for a small fencing company. This will have no adverse impacts on the APS district.

**MRGCD**

No Adverse Comment.

**NMDOT**

No comments. The development will have no direct or significant impact on the State's transportation system.

**NEIGHBORHOOD ASSOCIATIONS:**

North Edith Corridor Association

Merritt Acres Neighborhood Association

Northeast Valley Neighborhood Association

Alameda North Valley Association